

LATHAM & WATKINS LLP
 Perry J. Viscounty (Bar No. 132143)
 perry.viscounty@lw.com
 Andrew J. Fossum (Bar No. 250373)
 andrew.fossum@lw.com
 650 Town Center Drive, 20th Floor
 Costa Mesa, California 92626-1925
 Telephone: (714) 540-1235
 Facsimile: (714) 755-8290

LATHAM & WATKINS LLP
 Jennifer L. Barry (Bar No. 228066)
 jennifer.barry@lw.com
 600 West Broadway, Suite 1800
 San Diego, California 92101-3375
 Telephone: (619) 236-1234
 Facsimile: (619) 696-7419

Attorneys for Plaintiff and Counter-Defendant
 TRION WORLDS, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

TRION WORLDS, INC., a Delaware
 corporation,

Plaintiff,

v.

PALLADIUM BOOKS, INC., a Michigan
 corporation,

Defendant.

Case No. 3:10-cv-02466-CRB

ANSWER TO COUNTERCLAIM AND
 AFFIRMATIVE DEFENSES

PALLADIUM BOOKS, INC., a Michigan
 corporation,

Counterclaimant,

v.

TRION WORLDS, INC., a Delaware
 corporation,

Counterdefendant.

Counterdefendant Trion Worlds, Inc. (“Trion”), answers the allegations set forth in Counterclaimant Palladium Books, Inc.’s (“Palladium”) Counterclaim as follows:

I. JURISDICTION AND VENUE

1. Trion admits that Palladium purports to assert the claims described in Paragraph 1. Trion denies, however, that it has violated any laws.

2. Paragraph 2 asserts legal conclusions that do not require a response.

3. Paragraph 3 asserts legal conclusions that do not require a response.

II. THE PARTIES

4. Trion lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 4, and on that basis denies them.

5. Trion admits the allegations in Paragraph 5.

6. The first sentence of Paragraph 6 asserts legal conclusions that do not require a response. Trion denies that it has committed any tortious acts, either within this District or anywhere else.

III. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

7. Trion admits that Palladium owns those federal registrations that appear on the Federal Register for the mark RIFTS, although many of those registrations were obtained through fraud. Trion lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 7, and on that basis denies them.

8. Trion admits that it announced its massively multiplayer online game “Rift: Planes of Telara” in late April 2010, and that the “Rift: Planes of Telara” game has a website located at *riftgame.com*. Trion denies the remaining allegations of Paragraph 8.

9. Trion admits that Palladium filed an improper lawsuit in the Eastern District of Michigan on May 7, 2010 entitled *Palladium Books, Inc. v. Trion Worlds, Inc. et al.*, Case No. 10-cv-11859, asserting claims for trademark infringement, false designation, trademark dilution, and a variety of related state law claims, and that that lawsuit was dismissed for lack of personal jurisdiction on June 11, 2010. Trion further admits that Palladium filed for a TRO and preliminary injunction on May 28, 2010. Trion further admits that it states that it is a “premier

1 publisher and developer” on its website. Trion further admits that it has not yet sold any
2 products. Trion denies the remaining allegations of Paragraph 9.

3 10. Trion admits that it filed a motion to dismiss for lack of personal jurisdiction on
4 May 31, 2010. Trion further admits that it filed this action on June 3, 2010, while the Michigan
5 action was still pending (it was dismissed shortly thereafter). Trion denies the remaining
6 allegations of Paragraph 10.

7 11. Trion admits that the Michigan court held a hearing on June 9, 2010 and entered
8 an order on June 11, 2010 dismissing Palladium’s improper lawsuit for lack of personal
9 jurisdiction. Trion denies the remaining allegations in Paragraph 11.

10 12. Trion admits that Palladium has now filed a Counterclaim, which speaks for itself
11 as to the claims it asserts.

12 13. Trion lacks knowledge or information sufficient to form a belief about the truth of
13 the allegations in Paragraph 13, and on that basis denies them.

14 14. Trion lacks knowledge or information sufficient to form a belief about the truth of
15 the allegations of Paragraph 14, and on that basis denies them.

16 15. Trion lacks knowledge or information sufficient to form a belief about the truth of
17 the allegations of Paragraph 15, and on that basis denies them.

18 16. Trion lacks knowledge or information sufficient to form a belief about the truth of
19 the allegations of Paragraph 16, and on that basis denies them.

20 17. Trion lacks knowledge or information sufficient to form a belief about the truth of
21 the allegations of Paragraph 17, and on that basis denies them.

22 18. Trion lacks knowledge or information sufficient to form a belief about the truth of
23 the allegations of Paragraph 18, and on that basis denies them.

24 19. Trion lacks knowledge or information sufficient to form a belief about the truth of
25 the allegations of Paragraph 19, and on that basis denies them.

26 20. Trion lacks knowledge or information sufficient to form a belief about the truth of
27 the allegations of Paragraph 20, and on that basis denies them.

28 21. Trion lacks knowledge or information sufficient to form a belief about the truth of

1 the allegations of Paragraph 21, and on that basis denies them.

2 22. Trion lacks knowledge or information sufficient to form a belief about the truth of
3 the allegations of Paragraph 22, and on that basis denies them.

4 23. Trion admits that Palladium owns federal registration nos. 2,889,353; 3,036,181;
5 and 2,045,806 for the RIFTS mark, for the goods and service listed in Paragraph 23. Trion lacks
6 knowledge or information sufficient to form a belief about the truth of the remaining allegations
7 of Paragraph 23, and on that basis denies them.

8 24. Trion lacks knowledge or information sufficient to form a belief about the truth of
9 the allegations of Paragraph 24, and on that basis denies them.

10 25. Trion admits that Palladium has filed a federal trademark application for RIFTS,
11 Serial No. 85/043338 for “role playing games.” Trion lacks knowledge or information sufficient
12 to form a belief about the truth of the remaining allegations of Paragraph 25, and on that basis
13 denies them.

14 26. Trion admits the allegations in Paragraph 26, although that registration was
15 obtained through fraud and is therefore invalid.

16 27. Trion admits that Palladium owns a federal registration for the mark PROMISE
17 OF POWER, but denies that that registration includes the word “Rifts.” Trion lacks knowledge
18 or information sufficient to form a belief about the truth of the remaining allegations of
19 Paragraph 27, and on that basis denies them.

20 28. Trion admits the allegations in Paragraph 28.

21 29. Trion admits the allegations in Paragraph 29.

22 30. Trion admits the allegations in Paragraph 30.

23 31. Trion admits the allegations in Paragraph 31.

24 32. Trion admits the allegations in Paragraph 32.

25 33. Trion admits the allegations in Paragraph 33.

26 34. Trion denies the allegations in Paragraph 34.

27 35. Trion denies the allegations in Paragraph 35.

28 36. Trion admits the first sentence of Paragraph 36. The second sentence of

1 paragraph 36 contains a quotation from a third-party article, which speaks for itself and requires
2 no response.

3 37. Trion denies the allegations in Paragraph 37.

4 38. Trion denies the allegations in Paragraph 38.

5 39. Trion denies the allegations in Paragraph 39.

6 40. Trion admits that it promoted its “Rift: Planes of Telara” game at the 2010 E3
7 Expo, held June 15-17, 2010. Trion denies the remaining allegations of Paragraph 40.

8 41. Trion denies the allegations in Paragraph 41.

9 42. Trion denies the allegations in Paragraph 42.

10 43. Trion admits the allegations in Paragraph 43.

11 44. Trion admits that its federal trademark application was filed on an intent-to-use
12 basis. Trion denies the remaining allegations in Paragraph 44.

13 45. Trion denies the allegations in Paragraph 45.

14 46. Trion admits that it has registered the domain name *riftgame.com* through
15 GoDaddy.com and has opted to use GoDaddy.com’s privacy service. Trion further admits that
16 the GoDaddy.com registration information reflects that the domain servers are *trionworld.com*.
17 Trion denies the remaining allegations in Paragraph 46.

18 47. Trion admits that the *riftgame.com* domain name is being used to operate a
19 website for the “Rift: Planes of Telara” game. Trion denies the remaining allegations of
20 Paragraph 47.

21 48. Trion denies the allegations of Paragraph 48.

22 49. Trion denies the allegations of Paragraph 49.

23 50. Trion denies the allegations of Paragraph 50.

24 51. Trion admits the allegations of Paragraph 51.

25 52. Trion denies the allegations in Paragraph 52.

26 53. Trion denies the allegations in Paragraph 53.

27 **IV. CLAIMS FOR RELIEF**

28 **First Claim For Relief**

Trademark Infringement (15 U.S.C. § 1114)

54. Trion restates its responses to paragraphs 1-53 above.

55. Trion admits that Palladium owns the registrations listed, but denies that they are valid, as they were obtained through fraud. Trion denies the remaining allegations of Paragraph 55.

56. Trion admits that one of Palladium's federal registrations (which was obtained through fraud) contains this listing of goods and services.

57. Trion admits that Palladium has filed a federal trademark application for RIFTS, Serial No. 85/043338 for "role playing games." Trion lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 57, and on that basis denies them.

58. Trion denies the allegations in Paragraph 58.

59. Trion denies the allegations in Paragraph 59.

60. Trion denies the allegations in Paragraph 60.

61. Trion denies the allegations in Paragraph 61.

62. Trion denies the allegations in Paragraph 62.

Second Claim For Relief

False Designation of Origin -- 15 U.S.C. § 1125

63. Trion restates its responses to paragraphs 1-62 above.

64. Trion denies the allegations in Paragraph 64.

65. Trion denies the allegations in Paragraph 65.

66. Trion denies the allegations in Paragraph 66.

67. Trion denies the allegations in Paragraph 67.

68. Trion denies the allegations in Paragraph 68.

69. Trion denies the allegations in Paragraph 69.

Third Claim For Relief

California Statutory Unfair Competition – Cal. Bus. & Prof. Code § 17200 *et seq.*

70. Trion restates its responses to paragraphs 1-69 above.

71. Trion denies the allegations in Paragraph 71.

72. Trion denies the allegations in Paragraph 72.

73. Trion denies the allegations in Paragraph 73.

74. Trion denies the allegations in Paragraph 74.

75. Trion denies the allegations in Paragraph 75.

76. Trion denies the allegations in Paragraph 76.

77. Trion denies the allegations in Paragraph 77.

78. Trion denies the allegations in Paragraph 78.

Fourth Claim For Relief

Infringement of Common Law Trademarks

79. Trion restates its responses to paragraphs 1-78 above.

80. Trion denies the allegations in Paragraph 80.

81. Trion lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 81, and on that basis denies them.

82. Trion lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 82, and on that basis denies them.

83. Trion lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 83, and on that basis denies them.

84. Trion lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 84, and on that basis denies them.

85. Trion denies the allegations in Paragraph 85.

86. Trion denies the allegations in Paragraph 86.

87. Trion denies the allegations in Paragraph 87.

88. Trion denies the allegations in Paragraph 88.

89. Trion denies the allegations in Paragraph 89.

Fifth Claim For Relief

California Common Law of Unfair Competition

90. Trion restates its responses to paragraphs 1-89 above.

1 91. Trion denies the allegations in Paragraph 91.

2 92. Trion denies the allegations in Paragraph 92.

3 93. Trion denies the allegations in Paragraph 93.

4 **IV. PRAYER FOR RELIEF**

5 The remaining paragraphs in the Counterclaim constitute Palladium's prayer for relief to
6 which no answer is required. To the extent that the prayer for relief purports to state any factual
7 allegations, Trion denies them.

8 All allegations in the Complaint that Trion has not expressly admitted are denied. Trion
9 denies that Palladium is entitled to any of the relief that it requests.

10 **AFFIRMATIVE DEFENSES**

11 Trion expressly reserves the right to plead additional affirmative and other defenses
12 should any such defenses be revealed by any discovery in this case.

13 **First Affirmative Defense**

14 *Failure to State a Claim*

15 1. Palladium's Counterclaim fails to state facts sufficient to constitute claims upon
16 which relief can be granted against Trion.

17 **Second Affirmative Defense**

18 *Unclean Hands*

19 2. Palladium's purported claims for relief are barred in whole or in part by the
20 doctrine of unclean hands, based on Palladium's fraud in obtaining its federal trademark
21 registrations. The details of this fraud are contained in Trion's Complaint, and are incorporated
22 by reference.

23 **Third Affirmative Defense**

24 *Fraud*

25 3. Palladium's federal trademark registrations were obtained through fraud. The
26 details of this fraud are contained in Trion's Complaint, and are incorporated by reference.

27 **Fourth Affirmative Defense**

28 *Remote, Speculative And Contingent Damages*

1 4. To the extent that Palladium claims damages that will be incurred in the future,
2 such damages may not be recovered as they are remote, speculative and contingent.

3 WHEREFORE, Trion prays that Palladium takes nothing by way of its
4 Counterclaim and that Trion be awarded its attorneys' fees and costs of suit herein.

5 Dated: July 16, 2010

LATHAM & WATKINS LLP

6 By: /s/ Jennifer L. Barry
7 Jennifer L. Barry

8 Attorneys for Plaintiff and Counterdefendant
9 TRION WORLDS, INC.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System. Filing via the CM/ECF System constitutes service on all parties in this case pursuant to Section IX of General Order 45.

Dated: July 16, 2010

/s/ Jennifer L. Barry

Jennifer L. Barry